



DAVID R. EBERHART (S.B. #195474)  
deberhart@omm.com  
SHARON M. BUNZEL (S.B. #181609)  
sbunzel@omm.com  
O'MELVENY & MYERS LLP  
Two Embarcadero Center, 28th Floor  
San Francisco, CA 94111  
Telephone: (415) 984-8700

Attorneys for Plaintiff  
EBAY INC.

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

EBAY INC.,	)	Case No. CV 08-04052-EJD-PSG
	)	
Plaintiff,	)	<b>STIPULATION AND <del>PROPOSED</del></b>
v.	)	<b>ORDER CONTINUING CASE</b>
	)	<b>MANAGEMENT CONFERENCE</b>
DIGITAL POINT SOLUTIONS, INC.,	)	
SHAWN HOGAN, KESSLER'S FLYING	)	
CIRCUS, THUNDERWOOD HOLDINGS,	)	Judge: Hon. Edward J. Davila
INC., TODD DUNNING, DUNNING	)	Dept.: Courtroom 1
ENTERPRISE, INC., BRIAN DUNNING,	)	
BRIANDUNNING.COM, and DOES 1-20,	)	
	)	
Defendants.	)	

**THE PARTIES TO THE ABOVE-ENTITLED ACTION HEREBY STIPULATE  
PURSUANT TO CIVIL LOCAL RULES 7-12 AND 16-2:**

- Plaintiff alleges that Defendants, as participants in eBay's affiliate marketing program, engaged in cookie stuffing intended to defraud Plaintiff. Defendants deny Plaintiff's allegations.
- On or about October 15, 2009, Defendants moved to stay this action under *Keating v. Office of Thrift Supervision*, 45 F.3d 322 (9th Cir. 1995), pending resolution of parallel criminal investigations undertaken by the United States Attorney's Office and Federal Bureau of

1 Investigation concerning the same alleged cookie stuffing scheme at issue in this civil action.

2 3. On February 25, 2010, the Court issued an Order denying, without prejudice,  
3 Defendants' motions to stay this civil action. The primary basis for the denial of the motions was  
4 that no indictment had been returned as to any Defendant.

5 4. Defendants Shawn Hogan and Brian Dunning were indicted on June 24, 2010.  
6 *United States v. Hogan*, CR 10-0495 JF (N.D. Cal. June 24, 2010); *United States v. Dunning*, CR  
7 10-0494 JF (N.D. Cal. June 24, 2010). The indictments are based on the same alleged cookie  
8 stuffing scheme at issue in this civil action.

9 5. On June 29, 2010, the United States filed a Notice of Related Case stating that  
10 defendants Shawn Hogan and Brian Dunning in the instant action are alleged to have engaged in  
11 the same cookie stuffing scheme that is the subject of the indictments. On July 7, 2010, the Court  
12 issued an order finding that the instant civil action and the aforementioned criminal cases are  
13 related.

14 6. Based on the foregoing, on July 28, 2010, the parties to this action stipulated and  
15 moved that this civil action be stayed in its entirety as to all parties until further order by the  
16 Court. The parties also stipulated and moved the Court to vacate the existing case management  
17 dates, including but not limited to the fact and expert discovery cut-off dates, the pretrial  
18 conference date, and the jury trial date. The parties stipulated and moved that a further case  
19 management conference be set for February 11, 2011.

20 7. On August 3, 2010, the Court, pursuant to the parties' stipulation and motion,  
21 stayed the case in its entirety as to all parties and vacated all existing case management dates.  
22 The Court set a further case management conference for February 11, 2011 at 10:30 a.m.

23 8. Thereafter, on February 10 and August 5, 2011, pursuant to the parties' stipulation,  
24 the Court entered successive orders continuing the case management conferences in light of the  
25 pending criminal proceedings. After reassignment to this Court, this matter was set for further  
26 case management conference on January 13, 2012 at 10:00 a.m.

27 9. The criminal cases against defendants Shawn Hogan and Brian Dunning are  
28 ongoing. On November 7, 2011, the Court set trial dates for *United States v. Dunning* and

1 *United States v. Hogan* on October 23, 2012 and January 15, 2013, respectively.

2       10.     The parties stipulate and request that the Court continue the case management  
3 conference scheduled for January 13, 2012 10:00 a.m. until June 8, 2012, or as otherwise  
4 convenient for the Court. If either or both of the criminal cases are resolved prior to the  
5 rescheduled case management conference, the parties shall timely inform the Court.

6       11.     Notwithstanding the foregoing, the parties further stipulate that any party may  
7 move at any time to lift the current stay or to set a case management conference before June 8,  
8 2012.

1 **IT IS SO STIPULATED.**

2 DATED: December 13, 2011

DAVID R. EBERHART  
SHARON M. BUNZEL  
O'MELVENY & MYERS LLP

3  
4  
5 By: /s/ David R. Eberhart  
David R. Eberhart

6 Attorneys for Plaintiff  
7 EBAY INC.

8 DATED: December 13, 2011

SEYAMACK KOURETSCHIAN  
ROSS M. CAMPBELL  
COAST LAW GROUP LLP

9  
10 By: /s/ Ross M. Campbell  
Ross M. Campbell

11  
12 Attorneys for Defendants  
13 SHAWN HOGAN and DIGITAL POINT  
SOLUTIONS, INC.

14 DATED: December 13, 2011

LEO J. PRESIADO  
RUS, MILIBAND & SMITH

15  
16 By: /s/ Leo J. Presiado  
Leo J. Presiado

17  
18 Attorneys for Defendants  
19 THUNDERWOOD HOLDINGS, INC., BRIAN  
DUNNING and BRIANDUNNING.COM

20 DATED: December 13, 2011

PATRICK K. MCCLELLAN  
LAW OFFICE OF PATRICK K. MCCLELLAN

21  
22 By: /s/ Patrick K. McClellan  
Patrick K. McClellan

23  
24 Attorneys for Defendant  
25 KESSLER's FLYING CIRCUS  
26  
27  
28

1 DATED: December 13, 2011

TODD DUNNING

2  
3 By: /s/ Todd Dunning  
Todd Dunning

4 Pro Se

5 DATED: December 13, 2011

DUNNING ENTERPRISE, INC.

6  
7 By: /s/ Todd Dunning  
Todd Dunning

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9  
10 **ATTESTATION**

11 Pursuant to General Order No. 45X(B), I hereby attest that concurrence in the filing of this  
12 document has been obtained from each of the above-listed signatories.

13 DATED: December 13, 2011

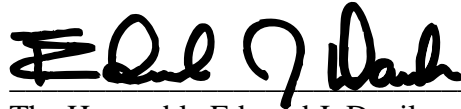
By: /s/ David R. Eberhart  
David R. Eberhart

**~~PROPOSED~~ ORDER**

Pursuant to the foregoing stipulation, and good cause appearing therefor, IT IS HEREBY ORDERED that the case management conference scheduled for January 13, 2012 at 10:00 a.m. is VACATED. Since it appears at this time that the stay imposed in this case will continue in effect into 2013, the Clerk shall administratively close this action. The parties shall submit a joint status report apprising the court of any developments which may affect the stay no later than April 15, 2012, and shall submit a similar report every three (3) months thereafter. This Order shall not prevent either party from seeking to reopen this case and lift the stay to set a Case Management Conference or request other relief should the circumstances warrant.

**IT IS SO ORDERED.**

Dated: December 15, 2011



The Honorable Edward J. Davila  
United States District Court Judge  
Northern District of California